

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211107

DATE: June 10, 1983

MATTER OF: James C. Troese

DIGEST: An employee who was transferred in January 1982 may not be reimbursed for any part of a \$340 loan origination fee he incurred incident to purchasing a home at his new duty station since the entire fee was considered a nonreimbursable finance charge under the regulations then in effect unless the employee submits an itemized list specifying what part, if any, is for items which are not finance charges.

This action is in response to a request for an advance decision whether Mr. James C. Troese, an employee of the Army Corps of Engineers, is entitled to be reimbursed for a \$340 lump-sum loan origination fee he paid when purchasing a new residence after being transferred in January 1982 to a new duty station in Harrisburg, Pennsylvania. We find that he is not entitled to be reimbursed because, under the regulations in effect at the time he reported to his new duty station, a lump-sum loan origination fee of the type he paid was considered a finance charge which was not reimbursable by the Government.

This question was submitted to our Office at the request of Mr. Troese by the Finance and Accounting Officer, Department of the Army, Baltimore District, Corps of Engineers, after the claim was originally rejected by that office.

The file shows that Mr. Troese reported for duty at his new duty station in Harrisburg on January 4, 1982. He subsequently purchased a home near Harrisburg, with the date of settlement being September 29, 1982. He submitted a claim to the Corps of Engineers in October 1982 for \$2,266.50 for costs associated with the purchase. However, only \$1,226.50 of the amount claimed was allowed because it was determined that the remainder, including a \$340 loan origination fee, were finance charges and therefore not reimbursable under the applicable Federal Travel Regulations. Mr. Troese resubmitted the rejected claims to the Corps of Engineers in December 1982 and they were denied again.

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In a subsequent response to that denial, Mr. Troese argued that he should be reimbursed for the \$340 loan origination fee because it was not a finance charge as defined in ~~12 C.F.R. § 226.4 (Regulation Z)~~ or by the bank that charged the fee, and that, therefore, it was reimbursable under Volume 2 of the Joint Travel Regulations (2 JTR). The Finance and Accounting Officer countered that under 2 JTR, paragraph C14002(d), and Matter of DeFazio, B-191038, November 28, 1978, reimbursement may be allowed only for those parts of a lump-sum loan origination fee shown by an itemized list as not being finance charges. Finally, Mr. Troese notified the Finance and Accounting Officer that he was unable to provide an itemization of the loan origination fee since it was charged as one percent of the amount of the loan rather than on an itemized basis. However, he maintained that the fee was not a finance charge because it only represents the bank's charge to prepare loan documents, that the bank does not treat it as a finance charge, that it cannot be considered a finance charge by any reasonable interpretation of the term, and that it is therefore reimbursable under ~~2 JTR paragraph C14002(d)~~.

Authority to reimburse a Government employee for expenses incurred in connection with the sale of a residence upon official transfer of station is found in 5 U.S.C. § 5724a (1976). Power to prescribe appropriate regulations implementing the above statute is given to the President. The governing regulations promulgated by the General Services Administration under authority delegated by the President are contained in chapter 2, Part 6, of the Federal Travel Regulations (FPMR ~~101-7~~).

Federal Travel Regulations (~~FPMR 101-7~~), paragraph 2-6.2d (effective November 1, 1981), which were in effect at the time Mr. Troese reported at his new duty station, prohibited reimbursement of any item found to be a finance charge under Regulation Z, 12 C.F.R. § 226.4(a), issued by the Board of Governors of the Federal Reserve System. Paragraph C14002, 2 JTR, restates these provisions for guidance of employees of Department of Defense agencies. The applicable 1981 Federal Travel Regulations do not specifically mention loan origination fees, although a subsequent change in those regulations, paragraph 2-6.2d (Supplement 4, effective October 1, 1982), specifically singles out such fees as reimbursable expenses. However, this change in the regulation is

applicable only to employees who report to their new stations on or after October 1, 1982, subsequent to the time Mr. Troese was transferred. Thus, the new regulation is not applicable in his case which must be decided under the prior provisions.

In determining whether or not a particular payment is a finance charge, the statement of the lending institution cannot be simply accepted. Matter of Keer, B-203630, March 9, 1982; Matter of DeFazio, cited above. The reviewing officials must examine the item in light of Regulation Z (12 C.F.R. Part 226), and our decisions. The items comprising a finance charge are listed in 12 C.F.R. § 226.4(a), and the items that may be excluded from finance charges in real estate transactions are listed in 12 C.F.R. § 226.4(e). The pertinent part of Regulation Z provides:

"226.4 Determination of finance charge.

"(a) General rule. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges, payable directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or payable by the customer, the seller, or any other person on behalf of the customer to the creditor or to a third party, including any of the following types of charges:

"(1) * * * any amount payable under a discount or other system of additional charges.

"(2) Service, transaction, activity, or carrying charge.

"(3) Loan fee, points, finder's fee, or similar charge.

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"(e) Excludable charges, real property transactions. The following charges

in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this part, shall not be included in the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

"(2) Fees for preparation of deeds, settlement statements, or other documents.

"(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

"(4) Fees for notarizing deeds and other documents.

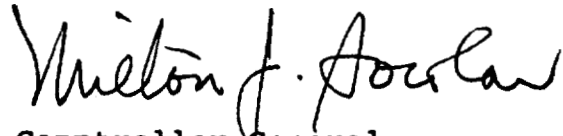
"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z was issued by the Board of Governors of the Federal Reserve System in accordance with the Truth in Lending Act, Title I, specifically 15 U.S.C. § 1605 (1976). The primary purpose of the Truth in Lending Act is to assure a meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available to them and avoid the uninformed use of credit. See 15 U.S.C. § 1601. Therefore, the finance charge is defined so as to distinguish between charges imposed as part of the cost of obtaining credit and charges imposed for services rendered in connection with a purchase or sale regardless of whether credit is sought or obtained. Matter of Keer, cited above.

The statement of the lending agency in this case that the loan origination fee is charged to prepare loan documents, make credit checks, inspections and in some cases property appraisals, is not dispositive of the issue. The fee was computed as a percentage of the face

value of the loan. In applying the regulations, the bank's description of the fee would seem to clearly fall within 12 C.F.R. §§ 226.4(a)(2) and/or (a)(3) as being incident to the extension of credit. See Matter of Keer; and Matter of Vrana, B-189639, March 24, 1978. However, it also appears that the description may fit within one of the specific finance charge exceptions under subsection (e). Nonetheless, we have held that there may be no reimbursement of a lump-sum loan origination fee. However, if the lump-sum fee includes specific charges which would otherwise be allowed, there must be a specific list of the services or charges that comprise the lump-sum amount, and only those items that are specifically excluded from the definition of a finance charge by subsection (e) may be reimbursed. Matter of Maiello, B-194732, April 11, 1980; Matter of Vrana. Since no such itemization has been furnished in this case, Mr. Troese is not entitled to be reimbursed for any part of the \$340 lump-sum loan origination fee because there is no basis to determine what part, if any, may be reimbursed.



Acting Comptroller General
of the United States